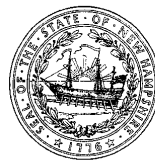




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

August 28, 2006

Gary Bardsley  
269 Eastman Hill Road  
Sanbornton, NH 03269

Peter + Gary, LLC  
6 Checkerberry Lane  
Concord, NH 03301

Re: Docket No. AF 05-092 – Motion to Accept Settlement Agreement

Dear Mr. Bardsley:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**  
Michael P. Sclafani,  
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner  
Harry T. Stewart, P.E., Director, Water Division  
Jennifer J. Patterson, NH DOJ  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Linda Magoon, DES WD

Gary Bardsley  
269 Eastman Hill Road  
Sanbornton, NH 03269

Peter + Gary, LLC  
6 Checkerberry Lane  
Concord, NH 03301

Re: School Street, Loudon Tax Map 38, Lot 8  
Program File #2004-2098

**ADMINISTRATIVE FINE**

**No. AF 05-092**

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Water Division ("the Division"), Gary Bardsley and Peter + Gary, LLC ("P+G"), parties to the above-captioned matter, and stipulate to the following:

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* (the "Wetland Rules") to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. P+G is the owner of property located on School Street in Loudon, New Hampshire, more particularly described as Lot 8 on Loudon Tax Map 38 (the "Property"). Peter McGrath is the registered agent and manager of P+G, according to records maintained by the New Hampshire Office of the Secretary of State.
4. On August 3, 2004, P+G filed a *Notice of Intent to Cut Wood or Timber* on the Property with the Town of Loudon. The Notice of Intent lists P+G as the Property owner and Gary Bardsley as the logger responsible for logging. Gary Bardsley signed the Notice of Intent as the logger for P+G. Peter McGrath signed the Notice of Intent as the Property owner and Manager of P+G.
5. On August 30, 2004, the Division received a *Notification of Forest Management or Timber Harvest Activities Having Minimum Wetlands Impact* (the "Notification") regarding the Property dated August 26, 2004. The Notification lists P+G as the Property owner and Gary Bardsley as the logger responsible for logging. Peter McGrath signed the Notification as the Property owner and Manager of P+G.

6. On November 7, 2005, the Division issued Notice of Proposed Administrative Fine and Hearing No. AF 05-092 (the "Notice") to Gary Bardsley and P+G seeking fines totaling \$6,000 for violations of RSA 482-A and the Wetland Rules.

7. Specifically, the Notice cited Respondents for violating NH Admin. Rule Wt 304.05(c) by failing to comply with timber harvesting best management practices, or more specifically by; (a) failing to remove slash from wetlands and wetland crossings; (b) failing to remove a poled ford after use; and (c) failing to install corduroy, geo-textile, or other suitable crossing device in wetlands, causing excessive rutting in two areas. Pursuant to Env-C 614.06(f), the Division sought a fine of \$2,000 per violation of Wt 304.05(c), or a fine of \$6,000 for the three violations alleged.

8. In order to settle this matter, the Division and Respondents have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

9. Of the proposed fine, in the amount of \$6,000, the Division agrees to suspend 25%, or \$1,500 contingent upon the Respondents remaining in compliance with the statutes, rules, and permits under the purview of DES, including the Wetland Rules, for a period of two years from the date of the execution of this Agreement. If one, or both, Respondents fail to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$1,500 shall become due and payable immediately. If Respondents maintain compliance with the rules and training requirements for the prescribed two-year period, the suspended portion of the fine shall be waived.

10. Respondents agree to pay the remaining \$4,500 on or before August 31, 2006.

11. Payment under Paragraph #10 and any payment that becomes due pursuant to Paragraph #9 shall be paid by certified or corporate check made payable to: "Treasurer, State of New Hampshire" and mailed to:

Department of Environmental Services - Legal Unit  
Attn: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

12. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

13. By executing this Agreement, Respondents waive their right to a hearing on or any appeal of the administrative fines identified in the Notice, and agree that this Agreement may be entered into and enforced by a court of competent jurisdiction.

14. The effective date of this Agreement will be the date on which it is signed by Gary Bardsley, Peter McGrath for P+G, the Director of the Water Division, and accepted by the Commissioner

of DES. After that date, this Agreement may be amended only by written agreement signed by all parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

15. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

Peter G. McGrath, P.E.

**COPY**

Date

8/16/06

By: Peter G. McGrath  
Duly Authorized

**COPY**

Date

8/16/06

Gary Bardsley

DES Water Division

**COPY**

Date

8/23/06

Harry T. Stewart, P.E., Director

This Motion to Accept Settlement agreement is granted this 23<sup>rd</sup> day of August, 2006.

**COPY**

Michael J. Nouri, Commissioner

Department of Environmental Services